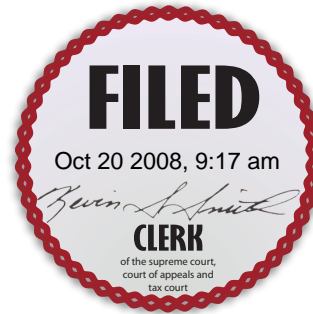


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMES DOANE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 64A03-0805-CR-231

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APPEAL FROM THE PORTER SUPERIOR COURT  
The Honorable Roger V. Bradford, Judge  
Cause No. 64D01-0608-FA-6874

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**October 20, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant James Doane (“Doane”) appeals the aggregate thirty-year sentence imposed following his convictions of two counts of Sexual Misconduct with a Minor, as Class B felonies,<sup>1</sup> and one count each of Sexual Misconduct with a Minor, as a Class C felony,<sup>2</sup> and Child Molesting, as a Class C felony.<sup>3</sup> We affirm.

## **Issue**

Doane presents a single issue for review: whether his sentence is inappropriate.

## **Facts and Procedural History**

Doane and his wife were therapeutic foster parents. E.D., who had previously been physically and sexually abused by her biological parents, was placed in Doane’s home in July of 2003. Soon thereafter, Doane began fondling E.D. In March of 2004, Doane and his wife adopted E.D. In late 2004, Doane began to engage in oral sex and intercourse with E.D. She was then twelve years old. The sexual activities continued for over two years.

During a commitment to a mental health facility, E.D. revealed that her adoptive father had been molesting her. After hearing that E.D. had reported the sexual activity, Doane went to a police station and confessed that he and E.D. “started having a sexual relationship with each other on a weekly basis.” (Tr. 208.)

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<sup>1</sup> Ind. Code § 35-42-4-9(a)(1).

<sup>2</sup> Ind. Code § 35-42-4-9(b)(1).

<sup>3</sup> Ind. Code § 35-42-4-3(b).

The State charged Doane with six felonies, including two counts of Sexual Misconduct with a Minor, as Class A felonies. At his trial, Doane testified and recanted his confession. The jury found him guilty of two Class B felonies and two Class C felonies, but acquitted him of the Class A felony charges.

On January 11, 2008, the trial court sentenced Doane to fifteen years on each of the Class B felonies and six years on each of the Class C felonies. The trial court ordered the sentences for the Class B felonies to be served consecutively, but concurrently to the sentences for the Class C felonies. Five years of the aggregate thirty-year sentence were suspended to probation. Doane failed to timely file a Notice of Appeal but perfected a belated appeal pursuant to Indiana Post-Conviction Rule 2.

### **Discussion and Decision**

Doane was charged with and convicted of one instance of Child Molesting occurring on or between the dates of July 1, 2003 and November 25, 2004, and three instances of Sexual Misconduct with a Minor occurring on or between the dates of November 26, 2004 and August 1, 2006. As such, some or all of the offenses occurred before the Indiana Legislature revised our sentencing statutes to provide for advisory, as opposed to presumptive, sentences.<sup>4</sup>

The presumptive sentence for a Class B felony was ten years, to which not more than ten years could be added for aggravating circumstances or not more than four years could be subtracted for mitigating circumstances. See Ind. Code § 35-50-2-5 (2004). The

presumptive sentence for a Class C felony was four years, to which not more than four years could be added for aggravating circumstances or not more than two years could be subtracted for mitigating circumstances. See Ind. Code § 35-50-2-6 (2004). As such, Doane received a sentence for each of his Class B felonies of five years above the presumptive sentence and a sentence for each of his Class C felonies of two years above the presumptive sentence.

Doane's sole contention is that his aggregate thirty-year sentence, with five years suspended, is inappropriate. Doane suggests that the appropriate aggregate sentence is twenty years, with ten years suspended. He requests that we reduce his sentence in accordance with Indiana Appellate Rule 7(B), which provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In particular, Doane emphasizes that his good character is evidenced by his lack of criminal history and his remorse.

The character of the offender is such that he had apparently led a law-abiding life for over forty years. We agree with Doane that evidence of his complete lack of criminal history is significant mitigating evidence. See Merlington v. State, 814 N.E.2d 269, 272 (Ind. 2004). Doane also points out that he admitted his conduct. It is true that he admitted his conduct in a police interview; however, he did not plead guilty to spare the victim a trial and he recanted his confession during his trial testimony. Doane requests that we consider his two suicide attempts as an expression of his great remorse. However, we observe that Doane offered no

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<sup>4</sup> Effective April of 2005, the Indiana Legislature amended Indiana's sentencing statutes. In particular, the

testimony at the sentencing hearing from a mental health professional or lay witness suggesting that the suicide attempts and Doane's crimes were connected.

The nature of the offenses is that Doane violated a position of trust with his adopted daughter. The victim was particularly vulnerable, as she had been physically and sexually abused in the past and required therapeutic foster care and mental health treatment. Doane began to sexually abuse E.D. when she was only twelve years old. The sexual abuse escalated from fondling to intercourse and continued for over two years. E.D. estimated that there were "forty or fifty" instances of intercourse. (Tr. 80.)

In sum, the character of the offender is such that some leniency is appropriate. The nature of the offenses suggests otherwise, as Doane abused his special-needs adopted daughter over an extended period of time. Doane has not persuaded us that his thirty-year aggregate sentence, with five years suspended to probation, is inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.